

## **PROGRAM REVIEW SUMMARY**

### **Background**

The U.S. EPA Region 7 air program (Region 7) conducted a review of the Kansas Department of Health and Environment (KDHE) Bureau of Air in FY 2010. The format for this program review was different than in previous years in which the air planning, permitting and enforcement staff conducted a joint review. In the FY 2010 review, the enforcement and permitting and air planning scheduled and conducted separate discussions. Region 7's review included an evaluation of the KDHE's management of the following areas and activities:

- Air Quality Planning
  - Regulatory Review
  - Management of Federal Assistance Agreements
  - Local Agency Oversight
  - Program Planning such as Flint Hills Smoke Management Program
  - Capacity Building and Training
- Ambient Air Monitoring Technical Systems Audit
- Permit Program
- Enforcement
- Small Business Stationary Source Technical and Environmental Compliance Assistance Program:
- Asbestos NESHAP Review

### **Summary**

This program review summary provides highlights and a brief description of the results of the review. The operations and management the KDHE's Bureau of Air was generally satisfactory and no major findings were identified during the FY 2010 review. The 2006 program review comments were discussed and all deficient areas have been addressed since the last review. KDHE is one of the top states in the nation for emission inventory data quality assurance and timely submittals. In addition, the detailed discussion of the EPA Region 7 enforcement review were included in a separate report and previously distributed to the KDHE.

### **Air Quality Planning**

The review of the KDHE's air quality planning activities included several items and took place in May 2010. As background, the KDHE provided Region 7 with their new organization chart, copies of signed local contracts, copies of local government audits, and a description of their regulatory process. Specifically regarding the KDHE's regulatory process, the region identified the need to update the state delegation agreements. The KDHE's state delegation agreement was last revised in 1985. The KDHE understands the need for a revised and up-to-date document, but it has been considered a low priority. The 1985 delegation agreement is deficient in many areas including the 110(l) provisions of the Clean Air Act (CAA), and the Tailoring Rule has forced a new perspective of delegation commitments. The KDHE agreed to include a revised Delegation

Agreement in the CAA section 105 workplan and to develop a new document, as priorities permit, in the next two years.

In FY 2010, the KDHE received several assistance agreements from the EPA Region 7 including Section 105 and Section 103 funds. The EPA discussed the eventual transition of funds from CAA section 103 to 105, which will happen gradually over a 4-5 year cycle. Details regarding the transition of CAA Section 103 to CAA Section 105 are not yet available.

In addition to the CAA funds, the KDHE has received several Diesel Emission Reduction Act (DERA) grants. Specifically, Region 7 and the KDHE discussed the 2009 ARRA/DERA state Program Grant. The KDHE received \$1.73 million for projects to reduce diesel emissions in the state of Kansas. The project will end March 31, 2011. During the project it was discovered that one of the sub-awardees, Eckert Construction Co., had been placed on suspension by the Department of Transportation (DOT); making Eckert ineligible to receive federal funding. DOT's suspension of Eckert was listed in March of 2010 and was made effective from October, 2009. The KDHE had awarded the sub-grant to Eckert in December of 2009, unaware of the suspension. The money awarded to Eckert was returned and re-allocated to another applicant. As a result of this incident, it was discovered that the KDHE had not included the EPA's terms and conditions in its sub-agreements and had provided advanced funding to sub-grantees. The KDHE was required to develop a Corrective Action Plan demonstrating to EPA the steps they would take to correct identified problems.

Also discussed at the review was the FY 2008 DERA National Competitive Grant, the FY 2008 DERA grant project was to install diesel oxidation catalysts (DOCs) on a fleet of waste hauler vehicles. They have accomplished part of the project, but because the prices of DOCs were much lower than originally priced the State had funds left over. The State has requested a year extension, ending 12/31/11, and will be submitting a revised work plan to spend the remaining funds and gain additional emissions. For the FY 2009 ARRA DERA grant, this grant has recently been extended for a year, ending 12/31/11. This was necessary to provide ample time for Burlington Northern Santa Fe (BNSF) to complete its project which was approximately 50 percent of the total project. This grant has recently been extended for a year, ending 12/31/11. This was necessary to provide ample time for BNSF to complete its project which was approximately 50 percent of the total project.

In regards to local agency oversight, the State annually negotiates and manages grant contracts with the City of Wichita, Public Works Department, Shawnee County Health Agency, Johnson County Environmental Department, Unified Government of Wyandotte County-Kansas City - Kansas Health Department and Mid-America Regional Council. Local Government contracts have stayed somewhat consistent for the past four years. With the recent reorganizational and financial budget constraints, Sedgwick County in Wichita and Johnson County will be conducting asbestos inspections under the State fiscal year 2011 contracts.

As part of the air quality planning review, Region 7 and the KDHE discussed the development of the first Smoke Management Plan (SMP) for the State of Kansas. The KDHE has committed a substantial amount of time to facilitating the development of the State's first SMP. With the revision of the new ozone standards, Wichita and Kansas City Metropolitan Areas (and surrounding counties) are facing nonattainment issues due to the spring prescribed burning in the Flint Hills. For most of the 2010 calendar year, the KDHE facilitated stakeholder meetings which included State legislators to develop an effective SMP consistent with the EPA's guidance. The SMP was written specifically for the Flint Hills prescribed management practices. Through a diverse group of stakeholder participation and contribution, the SMP supported mitigation measures that are distinctive and unique to the Kansas Flint Hills. The EPA believes that the program will reduce emissions from prescribed burning while supporting the agriculture and conservation goals of the Flint Hills communities. The KDHE will continue to evaluate the SMP to address and resolve high pollution episodes recorded at monitors resulting from the fires. EPA will continue to provide technical support to the KDHE and land managers as they implement this agreement.

In concluding the air quality portion of the review, the KDHE indicated that staff training has been an on-going challenge. The Bureau has utilized the EPA's State Implementation Plan (SIP) webinars and found them helpful for a broad overview, but it is difficult to tailor information to state level work. The best option may be to hold more intra-bureau cross-training sessions. If there is a gap in the information, the EPA has offered to help with the training.

### **Ambient Air Monitoring Technical Systems Audit**

In May 2010, Region 7's air monitoring team conducted a Technical Systems Audit and completed the Technical Systems Audit report in October 2010. As mentioned in the monitoring report, which has already been transmitted to the KDHE, the Kansas State and Local Air Monitoring Network (SLAMS) is designed to meet the EPA regulations and is reviewed annually. All of the monitors and the laboratory analytical procedures being utilized in the SLAMS network are the EPA designated reference or equivalent methods. The following commendations were identified in the Technical Systems Audit Report.:

- All sites maintained an operated by state and local agency's air monitoring program were clean, well maintained and in overall good condition.
- All site personnel were gracious, professional, and knowledgeable about the equipment at each site as well as the overall site conditions.
- All audited sites currently meet the siting criteria in 40 CFR Part 58, Appendix E.
- Quality assurance and quality control documentation as well as site and equipment log books were well maintained.
- All sites, with the exception of one, passed the performance audits conducted during the TSA.

## **Permit Program**

On May 17 – 19, 2010, the permitting section performed a focused evaluation of the KDHE air permitting program's files for the natural gas pipeline interstate transmission compressor stations. The review team evaluated all related permitting documents in the file for the past ten years, including Title V, Prevention of Significant Deterioration, synthetic minor, minor source permits and no permit required determinations. The EPA determined that on balance, the department runs a comprehensive construction and operating permit program related to the natural gas processing industry. In general, we found that all the projects reviewed completed the proper level of permitting with no major institutional gaps.

## **Enforcement and Compliance-State Review Framework (SRF) Process:**

The KDHE and Region 7 met to discuss the review of the Kansas Air Enforcement program. Region 7 prepared a list of files to be reviewed using the SRF guidance. The KDHE scanned the files for each of the facilities on the list and provided the electronic files to Region 7 for review. This saved travel and in turn reduced the disruption of the KDHE staff. In addition, KDHE received a questionnaire from Region 7 which was similar to the document completed by KDHE for the previous program review. The questionnaire allowed the EPA and the KDHE to address program related elements which may not be fully addressed by the SRF collected data. Region 7 attempted to streamline the document by eliminating redundant and irrelevant questions. Below is a chronology of the SRF portion of the review.

1/29/10	KDHE provides EPA with completed questionnaire and electronic files for review
2/26/10	EPA completes review of files and questionnaire and provides KDHE with any clarifying questions
3/12/10	KDHE provides response to any additional EPA questions
3/26/10	EPA prepares draft report. Exit meeting held with KDHE to discuss findings of review.
4/25/10	KDHE comments on draft report.
5/23/10	KDHE and EPA comments added and final report prepared.
10/07/10	Round 2 of the SRF review complete and report sent to KDHE.

As discussed in the SRF final report, which has already been provided. Three issues were identified during the review. A schedule for improvements and required actions has been agreed upon by both the EPA and the State. These corrections should be completed in 2011.

### **Kansas Small Business Stationary Source Technical and Environmental Compliance Assistance Program:**

Section 507 of the Clean Air Act requires the state to establish a Compliance Advisory Panel (CAP) to oversee and report on the effectiveness of the state small business assistance program. The purpose of this portion of the Kansas program review was to evaluate the current status of the Kansas small business stationary source technical and environmental compliance assistance program and was conducted on August 17, 2010, at the office of the Kansas Department of Health and Environment (KDHE). The review included a discussion that the state does not currently have an active CAP, with the last CAP meeting held in 2007. Even with the absence of a Compliance Advisory Panel (CAP), Kansas appears to be implementing a successful program. It is recommended that the KDHE continue to pursue opportunities to meet the intent of the CAP by either revitalizing the CAP or utilizing a Kansas Clean Air Act Advisory Group.

### **Asbestos NESHAP Review**

The KDHE staff evidence a thorough knowledge of both the state and federal NESHAP asbestos regulation, and is responsive to asbestos issues in the state. The program's enforcement files were generally well organized, but were, in a few instances, missing adequate supporting documentation. The KDHE exhibits professionalism during asbestos compliance inspections and adheres to appropriate safety practices. Due to financial constraints imposed on July 1, 2009, implementation of the program has been severely curtailed, and is essentially limited to enforcement of the state's asbestos regulation as opposed to the asbestos NESHAP. The EPA is greatly concerned about the KDHE's apparent disinvestment for enforcing the asbestos NESHAP, but recent communication between our respective agencies appears to be resolving this situation.